

UNITED STATES DISTRICT COURT
District of Massachusetts

JOSEPH P. SCHMITT, PRO SE,
PLAINTIFF,
V.
JEFFREY SMITH, ET AL.,
DEFENDANTS.)
C.A. 04-10451-RWZ
RECEIVED 10/26/2004 12:19
U.S. DISTRICT COURT
DISTRICT OF MASS

PLAINTIFF'S MOTION FOR THE COURT TO ORDER THE
DEFENDANTS TO PRODUCE A TRUE COPY OF SUFFOLK
SUPERIOR CIVIL COURT ACTION NUMBER
SUCV2002-02562 SCHMITT V. SMITH, ET AL.

Now comes the pro se plaintiff and moves for this Honorable Court to issue an order to the defendants, MA. Department of Correction, to produce a true copy of Suffolk Superior Civil Court action Number SUCV2002-02562.

As grounds for this motion, plaintiff states the following under pains and penalties of perjury:

1. Plaintiff had eight civil actions filed in Suffolk Superior Civil Court in 2002 against the MA. Department of Correction and its employees,

2. The civil action being requested is directly associated to this USDC action,

3. Plaintiff was forced by the actions of the defendants combined with the fact that he was not receiving equal justice from the lower court to withdraw the requested action from the lower court and did have all intentions of filing said action in the USDC.

4. Plaintiff completed his prison term of 4 - 8 years on August 11, 2002 and from that day has been held as a civil detainee at the MA. Treatment Center.

5. Plaintiff did not receive any of his eight civil actions which he had in his property when he was transferred from MCI-Cedar Junction to the MA.

Treatment Center. Plaintiff did file a grievance on this matter. See Exhibit "A" attached to this motion.

6. After nearly nine months MA. Treatment Center grievance Officer, Sergeant John Burgo finally responded to plaintiff's grievance. 103-CMR-491 very clearly dictates that a grievance must be answered within ten days. Plaintiff's grievance was denied alleging that grievance officer conducted an investigation was conducted and said legal documents were confiscated and being held by MA. Department of Correction Legal Division.

7. Plaintiff appealed his denied grievance to the superintendant of the Treatment Center, Robery Murphy whom denied the appeal. See Exhibit "A" attached to this motion.

8. MA. Department of Correction Grievance Coordinator, Kristie Ladouceur repeatedly denied my claims set out in my grievance, specifically that the MA. Department of Correction Officials did confiscate my eight civil action law suit files and did not forward them to the Treatment Center to return to me with the rest of my personal property. See Exhibit "B" and "C" attached to this motion.

9. After protesting to the MA. Department of Correction Commissioner, Kathleen Dennehy plaintiff received exhibit "O". See exhibit "O" attached to this motion. This exhibit clearly proves that grievance office John Burgo from the MA. Treatment Center did in fact file false allegations on official MA. Department of Correction forms. which in fact violated my Due Process Right and other laws of the state and plaintiff's rights.

10. Plaintiff wrote various Governmental Officials regarding this act of criminal corruption. To save the Court's time and paperwork at this time these documents are not attached to this motion, but shall be introduced as exhibits in this action at a later date.

11. Plaintiff received exhibit "P" from MA. Correctional Legal Service. See exhibit "P" attached to this motion. This exhibit brings to light the fact that plaintiff was subjected to blantant lies, deceptions and illegal conduct from MA. Department of Correction Officials. Officials who represent a law enforcement agency of the Commonwealth and surely have an above average knowledge of the law and basic Civil Rights.

12. Suffolk Superior Civil Court refused to supply plaintiff with a copy of the civil action(s) and plaintiff was not in the financial position to pay the expensive fee requested for said copies.

13. Defendants actions have blantantly violated plaintiff's rights, and Suffolk Superior Civil Court's refusal to supply a copy of said civil action only served to make the violation of rights worse. Said actions made it virtually impossible for plaintiff to rewrite and file said action in USDC to obtain justice as is his guaranteed right according to the State Bill of Rights and the U.S of A Constitution.

14. This Suffolk Superior Civil Action contains vital facts and material that support plaintiff allegations. Plaintiff has the right to have such material returned to him by the defendants who illegally confiscated it in the first place.

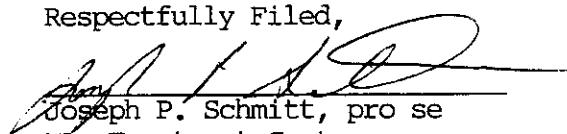
WHEREFORE , Plaintiff prays this Honorable Court grant his motion an issue an order for the Defendant, MA. Department of Correction to produce a true and complete copy of Suffolk Superior Civil Court action SUCV2002-02562 Schmitt v. Smith, et al.

Dated; October 22, 2004

cc: USDC Clerk of Court
USDC Judge RWZ
MA. DOC Legal Division
JPS File.

Attachments: Exhibits 'A' 'B' 'C' 'O' 'P'

Respectfully Filed,


Joseph P. Schmitt, pro se
MA. Treatment Center
30 Administration Road
Bridgewater, MA. 02324-3230

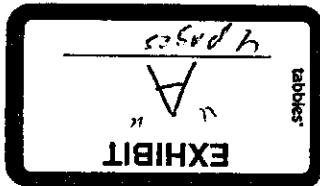


Sgt. John Burgo, IGC

Received
7-28-03

Resident Joseph Schmitt
18189 D2 Unit Re: lost legal property from CS

Lack of container



RECEIVED
NOV 03 2002DEPARTMENT OF CORRECTION
INMATE GRIEVANCE FORM

By FORWARD TO THE INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)

SECTION "A"NAME: Joseph Schmitt INSTITUTION: MTCNUMBER: M-81137 HOUSING UNIT: MPC DATE OF INCIDENT: Oct 2002

COMPLAINT: MCI-CJ did not forward my typewriter and 8 civil actions all of which were packed in my 10 block cell upon my move up date/transfer date Aug 9th, 2002. I did inform MPC Officer William Matthews of this problem and requested (ATTACH ADDITIONAL PAGE IF NECESSARY) grievances since the issue came to light.

Also letters & paperwork from Daniel Tavari and Charles Clark was not forwarded with my property.

REMEDY

REQUESTED: Return my typewriter in perfect working condition and civil actions 02-0335; 02-1461; 02-1662; 02-0590; 02-1066; 02-1492; 02-2562 and 02-1074, in complete form. Send 1 lawsuit can be obtained from M.I. DOC Legal Division Attorney Julie E. Daniels, or contact IPI at MCI-CJ. Return all my letters and paperwork.

INMATE SIGNATURE: Joseph P. SchmittDATE: 10-30-02STAFF RECIPIENT: John BurgoDATE: 11-03-02DATE RECEIVED: 11-03-02SECTION "B"ASSIGNED GRIEVANCE NUMBER: 2002-79DECISION RENDERED: APPROVED
X DENIED

SUMMARY OF FINDINGS:

Ie advised after the investigation at MCI-CJ cell Legal Documents were turned in to D.O.C. Legal Dept. Your request for legal documents would have to go through Dcpt. Legal Office. All time limits were waived per Supt. Murphy.

You Have Ten Days To Appeal This Decision

IGC SIGNATURE: John BurgoDATE: 7-17-03ASSIGNED GRIEVANCES MAY BE APPEALED TO THE SUPERINTENDENT WITH 10 DAYS OF IGC'S DECISION.

SECTION "C"

INMATE GRIEVANCE RECEIPT

INMATE NAME: Schmitz, JosephINSTITUTION: MTCNUMBER: M81137DATE RECEIVED: 11-03-02SIGNATURE (IGC): John BeuzaTITLE: 1st

491 - 13

01/05/01

08-04-03A10:16 RCV

DEPARTMENT OF CORRECTION
INSTITUTION APPEAL FORM
FORWARD TO THE INSTITUTIONAL SUPERINTENDENT

SECTION A

NAME: Joseph P. Schmidt INSTITUTION: MTC

NUMBER: M-81137 HOUSING UNIT: D1 DATE OF INCIDENT: Oct 2002

APPEAL: The fact that my legal material is being delayed my immediate access violates my civil rights. These law suits are all against DOC officials and DOC officials complicated them. Also note it took nearly 8 months for the grievance to be responded to. Also I only received the denied grievance on 7-28-03 11 days after I filed signed off on it
(ATTACH ADDITIONAL PAGE IF NECESSARY)

REMEDY

REQUESTED: Return all my legal material in perfect condition and in complete form as it was when it was illegally confiscated by DOC officials. Return my typewriter or pay me for it and the return it to my cell.

INMATE SIGNATURE: Joseph P. Schmidt DATE: 7-30-03

STAFF RECIPIENT: _____ DATE: _____

DATE RECEIVED: _____

SECTION B

ASSIGNED GRIEVANCE NUMBER: 2002-79

ASSIGNED INSTITUTION APPEAL NUMBER: _____

DECISION RENDERED: APPROVED
✓ DENIED

SUMMARY OF FINDINGS:

Matter has been addressed appropriately at this level.

SUPERINTENDENT'S SIGNATURE: M. John DATE: 8/25/03

SECTION C

INMATE APPEAL RECEIPT

INMATE NAME: Joseph Schmidt INSTITUTION: MTC

NUMBER: D1-81137 D-1 DATE RECEIVED: 08-04-03A10:16 RCV

RECEIPTING STAFF: Frank M. Miranda TITLE: WNDT

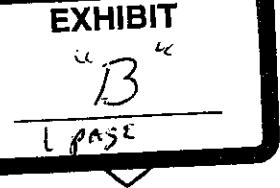


Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

Edward A. Flynn
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety
Department of Correction
50 Maple Street, Suite 3
Milford, Massachusetts 01757-3698
(508) 422-3300
www.mass.gov/doc



Kathleen M. Dennehy
Acting Commissioner

James Bender
Acting Deputy Commissioner

Joseph Schmitt, M81137
MTC
30 Administration Rd.
Bridgewater, MA 02324

December 29, 2003

Dear Mr. Schmitt:

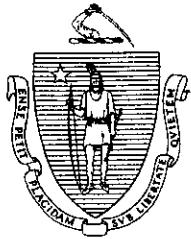
In accordance with 103 CMR 491, Inmate Grievance Policy, the Department Grievance Coordinator reviews all grievance appeals denied at the Superintendent's level. As a result of the aforementioned requirement, I have reviewed your grievance (#02-79) and appeal, relative to confiscated/missing law suits.

Please be advised that after a thorough review of the above-mentioned grievance and appeal, I support the Superintendent's decision to deny your grievance, as my investigation revealed that the law suits noted in your grievance are not being held at MCI-Cedar Junction. Additionally, property inventory records reveal that your legal documents were sent to the Massachusetts Treatment Center accordingly.

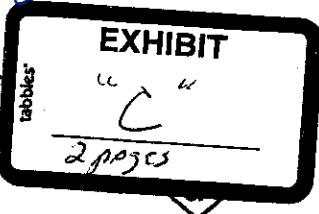
Sincerely,

Kristie Ladouceur
 Kristie Ladouceur
 Department Grievance Coordinator

cc. Superintendent Murphy
 J. Burgo, IGC
 File



*The Commonwealth of Massachusetts
Executive Office of Public Safety
Department of Correction*



Mitt Romney
Governor

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Secretary

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Milford, Massachusetts 01757-3698
(508) 422-3900
www.mass.gov/doc

Kathleen M. Dennehy
Acting Commissioner

James Bender
Acting Deputy Commissioner

February 23, 2004

Joseph Schmitt, M81137
Massachusetts Treatment Center
30 Administration Road
Bridgewater, MA 02324

Dear Mr. Schmitt;

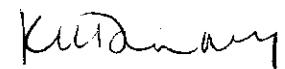
I am in receipt of your correspondence dated January 15, 2004 regarding your allegations of missing legal property.

Please be advised, an intensive search for your legal materials at MCI Cedar Junction and the Massachusetts Treatment Center has been unsuccessful. Department of Correction's records indicate that your legal property was sent to the Massachusetts Treatment Center on September 17, 2003. Any materials that were confiscated by the Inner Perimeter Security staff at MCI Cedar Junction is due to the material being contraband (sexually explicit). Those materials will remain as evidence pending the resolution of your civil commitment process. All eight civil actions which you list in your correspondence to Undersecretary Bradley have been dismissed by the Court. In fact, the Court specifically stated on December 3, 2003 that in each of the eight cases you could not have certified copies because you were seeking in excess of 2,500 pages, the cost of which totals \$6,425.00.

You also state in your correspondence to Undersecretary Bradley that you were threatened with bodily harm in the front gate/hallway of MCI Cedar Junction by D.O.C. Be advised, Sergeant Mulvey was interviewed regarding the allegations in which he denied. You did in fact refuse to move to the Massachusetts Treatment Center in which staff at MCI Cedar Junction told you the potential option would be to use force. You did move voluntarily at this time, which avoided injury to you and staff.

I trust this response addresses your concerns.

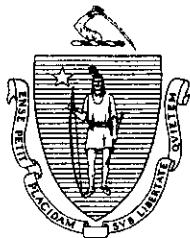
Sincerely,



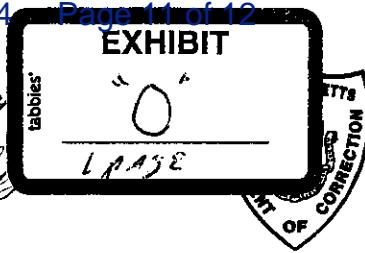
Kathleen M. Dennehy
Acting Commissioner

KD/TH/bt

cc: Patrick H. Bradley, Undersecretary of Criminal Justice
Timothy Hall, Acting Assistant Deputy Commissioner
File



*The Commonwealth of Massachusetts
Executive Office of Public Safety
Department of Correction*



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Milford, Massachusetts 01757-3698
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www.mass.gov/doc

Kathleen M. Dennehy
Acting Commissioner

James Bender
Acting Deputy Commissioner

Joseph Schmitt, M81137
MTC
30 Administration Rd.
Bridgewater, MA 02324

March 8, 2004

Dear Mr. Schmitt:

I am in receipt of your correspondence dated January 30, regarding grievance #02-79. More specifically, you express your dissatisfaction with the outcome of this grievance and request that you be provided with your legal cases and your typewriter.

Please be advised that I have discussed this matter with Kristie Ladouceur, who is the Department Grievance Coordinator and appellate authority regarding grievance matters. Ms. Ladouceur informed me she directed your Institutional Grievance Coordinator to contact the Legal Division to ensure they were not holding any legal cases belonging to you. However, upon contacting the Legal Division herself, it was revealed that your Institutional Grievance Coordinator did not discuss the matter with them. Additionally, Ms. Ladouceur was advised that the Legal Division was not holding your legal cases. Furthermore, I was advised that upon review of your property records it was clear that your legal documents were forwarded to MTC. Lastly, Ms. Ladouceur informed me that she is giving your typewriter concerns reconsideration, as this issue was inadvertently overlooked and you will be provided a separate response regarding her findings within the next week.

I hope that this letter has clarified concerns surrounding your grievance.

Sincerely,

Kathleen M. Dennehy
Acting Commissioner

cc. Kristie Ladouceur, Department Grievance Coordinator
File

EXHIBIT

tabbed

P

1 PAGE

MASSACHUSETTS CORRECTIONAL LEGAL SERVICES
8 WINTER STREET, ELEVENTH FLOOR
BOSTON, MA 02108-4705

(617) 482-2773
TOLL FREE (800) 882-1413
COLLECT CALLS (617) 482-4124
FAX (617) 451-6383

March 31, 2004

Joseph Schmitt
M-81137
Massachusetts Treatment Center
30 Administration Rd.
Bridgewater, MA 02324

Re: confiscated lawsuits

Dear Mr. Schmitt:

Leslie Walker contacted DOC legal about your confiscated lawsuit. According to general counsel Nancy White, DOC does not have your lawsuits. Apparently they are now in the hands of the Worcester County DA's office.

I am sorry but MCLS cannot assist you further with getting your lawsuits returned to you. Good luck.

Sincerely,



AT

Al Troisi

AT/ps